BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF

CHI MINH ERIC DUONG AND HAU YING
DUONG
3820 SUPERIOR AVENUE
CLEVELAND, OHIO

RESPONDENTS

DIRECTOR'S FINAL
FINDINGS AND ORDERS
FOR INTERIM ACTION
AND COST RECOVERY
SETTLEMENT

FOR THE SITE KNOWN AS

ASIAN TOWN CENTER
(formerly KICHLER LIGHTING)
3820 SUPERIOR AVENUE
CLEVELAND, OHIO

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

By: [Signature]
Date: 9/24/18
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APPENDIX C – NOTICE AND DEED RESTRICTIONRecorded 08/02/1999
PREAMBLE & STATEMENT OF PURPOSE

It is agreed to by the Parties to address certain conditions at the Site to protect public health and safety and the environment, as provided below:

I. JURISDICTION

1. These Director's Final Findings and Orders ("Orders") are issued to Chi Minh Eric Duong and Hau Ying Duong pursuant to the authority vested in the Director of Ohio EPA under Ohio Revised Code ("ORC") §§ 3734.13, 3734.20, 6111.03, and 3745.01.

II. PARTIES BOUND

2. These Orders shall apply to and be binding upon Respondents, affiliates, and/or successors in interest liable under Ohio law.

3. No change in ownership of the Site or change in corporate status of the Respondents including, but not limited to, any transfer of assets or real or personal property shall in any way alter any Respondents' obligations under these Orders.

III. DEFINITIONS

4. Unless otherwise expressly provided herein, all terms used in these Orders or in any appendices shall have the same meaning as defined in ORC Chapters 3734 and 6111, CERCLA, and the rules promulgated thereunder. Whenever the terms listed below are used in these Orders or in any appendices, attached hereto and incorporated herein, the following definitions shall apply:


b. "Contaminant" and "Contamination" means (1) any "hazardous waste" under ORC § 3734.01(J); (2) any "industrial waste" under ORC § 6111.01(C); and (3) any "other wastes" under ORC § 6111.01(D), including any release of one or more of the same.

c. "Environmental Covenant" means a servitude arising under an environmental response project that imposes activity and use limitations and that meets the requirements established in ORC § 5301.82.
d. "Interim Action" means the process undertaken at the Site to replace the current Deed Restriction to an Environmental Covenant with land use restrictions, ground water use restrictions, and a limitation on routine building occupancy within the former machine and plating shop areas, as shown in Appendix B. Prior to routine building occupancy of the restricted area, a remedy that mitigates vapor intrusion to indoor air exposures must be implemented or a demonstration shall be made that the building occupancy area complies with applicable indoor air standards without implementation of a remedial activity.

e. "Ohio EPA" means the Ohio Environmental Protection Agency and its designated representatives.

f. "Parties" means Respondents and the Ohio EPA.

g. "Respondents" means Chi Minh Eric Duong and Hau Ying Duong.

h. "Response Costs" means all future costs including, but not limited to, payroll costs, contractor costs, travel costs, direct costs, overhead costs, legal and enforcement related costs, oversight costs, laboratory costs, and the costs of reviewing or developing plans, reports, and other items pursuant to these Orders, verifying the Work, or otherwise implementing or enforcing these Orders.

i. "Site" means the approximately 3.24-acre property owned by Respondents located at 3820 Superior Avenue, Cleveland, Ohio, and identified in Cuyahoga County Auditor’s Office as parcel number 102-30-001, where the treatment, storage, and/or disposal of hazardous waste, and/or the discharge to waters of the state of industrial waste or other wastes have occurred, including any other area where such hazardous wastes, industrial wastes, and/or other wastes have migrated or threaten to migrate.

j. "Work" means all activities Respondents are required to perform under the Performance of Work Section of these Orders.

IV. FINDINGS

5. The Director of Ohio EPA has determined the following findings:

a. The Site is a former Kichler Lighting facility, addressed prior as 1517-1541 East 38th Street in Cleveland, Ohio, with the following former parcel numbers for the Cuyahoga County Recorder: 102-30-001, 002, 035, 036, 037, 038, 039, 040, 041.
b. A No Further Action ("NFA") Letter was submitted to Ohio EPA's Voluntary Action Program ("VAP") for the Site on February 17, 1998, on behalf of Harold S. Minoff, Clare Minoff, and Kichler Lighting, in pursuit of a Covenant Not so Sue ("CNS") CNS. On August 30, 1999, Director's Final Findings and Orders ("DFFOs") and a CNS were issued to Kichler Lighting regarding the Site. It was later discovered that the DFFOs incorrectly identified parcel numbers on the Site, and the DFFOs were subsequently amended and finalized on November 1, 1999.

c. According to the NFA for the Site, the property was used for manufacturing and/or warehousing from the late-1800s through 2003. Historical operations on the Site have included sheet metal and metal products manufacturing and warehousing, a lumber yard, a plating shop, a machine shop, and a paint shop, among others. From approximately 1976 through 1997, Kichler Lighting leased the Site and manufactured, painted, packaged, and shipped lighting fixtures at the facility.

d. Historical Contamination at the Site primarily consisted of volatile organic compounds ("VOCs"), including trichloroethylene ("TCE") and tetrachloroethylene ("PCE"), petroleum, and metals, including lead.

e. The CNS relied upon institutional controls established by a Notice and Deed Restriction recorded with the Cuyahoga County Recorder's Office on August 2, 1999 under the Cuyahoga County Record Number (AFN) 199908020391, provided in Appendix C. The use restrictions limit the property to commercial and industrial use only and prohibit the use of ground water. In addition, the Deed Restriction requires the use of engineering controls and a vapor barrier when constructing any buildings for human occupancy in the vicinity of a former plating shop, as described in paragraph (1)(b) of the Notice and Deed Restriction.

f. On October 16, 2003, Respondents purchased the Site from Harold S. Minoff and Clare Minoff. Respondents currently use the Site to operate the Asian Town Center business and retail center. The Site is also utilized by other retail and commercial businesses.

g. The Site was subject to periodic visual inspection because of the use restrictions relied upon for the CNS, pursuant to ORC § 3746.171, which states, "At least once every five years, the director or an authorized representative of the director shall visually inspect each such property to determine whether the property is being used in compliance with the applicable institutional controls or activity and use limitations."

h. During a periodic visual inspection conducted on May 13, 2015, an operational day care was identified, which occupied a portion of the Site within a former machine shop area. The operation of a day care facility is inconsistent with the commercial
and industrial land use restriction described in the recorded 1999 Deed Restriction under the CNS.

i. On September 25, 2015, a Notice of Noncompliance was sent to Respondents describing the results of the periodic visual inspection. The visual inspection findings indicated that the Site was used in a manner that did not comply with the commercial and industrial land use restriction and therefore resulted in an automatic voidance of the CNS, pursuant to ORC § 3746.05. Respondents were given an opportunity to provide documentation of compliance, but did not successfully make such a demonstration.

j. On January 29, 2016, a Notification of Voidance of the CNS was sent to Respondents. The CNS was automatically voided on the day the day care center opened for business and was first occupied by children in September 2011.

k. From January 15 through January 22, 2016, Ohio EPA conducted indoor air and sub-slab soil gas sampling at the Site. Laboratory analyses indicated detections of TCE and other VOCs; TCE was the only VOC that exceeded the Ohio EPA VAP indoor air standard for commercial and industrial properties.

l. As a result of the investigation conducted in January 2016, Ohio EPA determined that applicable indoor air standards for commercial and industrial use were exceeded for TCE in the former machine shop area, most recently occupied by the Academy of Excellence Childcare Center, and implementation of a remedy is needed before this portion of the Site can again be occupied for commercial and industrial land use. The investigation also determined that additional indoor air monitoring would be necessary to confirm that other portions of the property are in compliance with applicable indoor air standards.

m. On February 18, 2016, Ohio EPA sent Respondents the Indoor Air Monitoring Plan Kichler Lighting, Cleveland/Asian Town Center, requiring four quarterly indoor air monitoring sampling events in four locations to be conducted in February, May, August, and November 2016, to be analyzed for TCE and other VOCs detected previously in the January 2016 sampling event.

n. The sampling results of the 2016 Indoor Air Monitoring Plan Kichler Lighting, Cleveland/Asian Town Center confirmed that the occupied portions of the building meet commercial and industrial indoor air standards, and determined that no further indoor air monitoring would be needed in these portions of the building.

o. The former machine shop area, which is currently unoccupied, will require further indoor air monitoring and/or a remedy that demonstrates applicable indoor air standards are met prior to occupancy of this area or portions of this area.
p. The existing Notice and Deed Restriction Recorded 08/02/1999 require that any future free standing structures intended for human occupancy constructed within the former plating shop area implement a remedy to mitigate vapor intrusion to indoor air exposures. This area is currently a parking lot.

q. The Site is a hazardous waste facility, solid waste facility or other location where hazardous waste was treated, stored or disposed.

r. Because of their quantity, concentration, physical or chemical characteristics, the Contaminants found at the Site are “hazardous waste” as defined under ORC § 3734.01(J).

s. The Contaminants found at the Site are “industrial waste” or “other wastes” as defined under ORC §§ 6111.01(C) and (D).

t. The ground and surface waters at the Site are “waters of the state” as defined in ORC § 6111.01(H).

u. Ohio EPA will incur Response Costs associated with this Site.

v. Respondents are each a “person” as defined under ORC §§ 3734.01(G) and 6111.01(l).

w. Conditions at the Site constitute a substantial threat to public health or safety or are causing or contributing or threatening to cause or contribute to air or water pollution or soil contamination as provided in ORC § 3734.20(B).

x. The migration and threatened migration of Contaminants to soil, ground water, or surface water at or from the Site constitutes a discharge to “waters of the state,” as the term is defined in ORC § 6111.01(H).

y. The Work required pursuant to these Orders will contribute to the prohibition or abatement of the discharge of Contaminants to waters of the State.

z. The actions to be taken pursuant to these Orders are reasonable and necessary to protect the public health or safety or the environment as provided in ORC § 3734.20.

V. GENERAL PROVISIONS

6. Objectives of the Parties
The objectives of the Parties in entering into these Orders are to protect public health and safety and the environment from the disposal, discharge, or release of Contaminants through performance by Respondents of the following, as necessary:

a. Replace established use restrictions contained within the Notice and Deed Restriction recorded on August 2, 1999 to an Environmental Covenant for the Site to address substantial threats to human health.

b. Prior to use of the building housing a former machine shop or the area of the demolished former plating shop or portions thereof:

   i. Collect sufficient data to assess vapor intrusion to indoor air exposures,

   ii. Implement an Interim Action that mitigates vapor intrusion to indoor air exposures to meet applicable indoor air standards or demonstrate that the building occupancy area complies with applicable indoor air standards without implementation of a remedy.

7. Commitment of Respondents

   Respondents agree to perform the Work in accordance with these Orders, all relevant guidance documents, and all standards, specifications, and schedules as approved by Ohio EPA. Respondents also agree to reimburse Ohio EPA for future Response Costs and perform all other obligations of these Orders.

VI. PERFORMANCE OF THE WORK BY RESPONDENTS

8. Land Use Restrictions

   Respondents shall replace the Revised July 29, 1999 Notice and Deed Restriction recorded on August 2, 1999, with an Environmental Covenant for the Site which will include the existing restrictions listed in paragraphs (a) and (b) and will expand the building occupancy restriction as defined in paragraph (c):

a. Site-wide limitation on land use to commercial or industrial land use;

b. Site-wide prohibition on ground water extraction or use for potable purposes and for processing or cleaning of any sort. No wells are to be installed on the site for purposes other than ground water monitoring or remediation; and
c. Prior to human occupancy of any building within the former machine shop and plating shop areas or portions thereof as described by a legal description in Appendix B, either:
   
i. Install, operate, and maintain a remedy that mitigates indoor air vapor intrusion exposure to hazardous substances in soil or groundwater in excess of applicable standards as an engineering control under an approved operation and maintenance agreement; or
   
ii. Demonstrate that the area complies with applicable standards for the vapor intrusion to indoor air exposure pathway without further implementation of remedial activity.

9. Preparation and Filing of Environmental Covenant

a. Within thirty (30) days after the Effective Date of these Orders, Respondents shall submit a draft Environmental Covenant prepared for the property that is part of the Site owned by the Respondents, based on the template contained in Appendix A, and with activity and use limitations that are consistent with Paragraph 8 of these Orders. Following Ohio EPA review, the final version agreed to by the parties shall be signed by the Respondents, and shall be approved and signed by Ohio EPA.

b. Within thirty (30) days after the Environmental Covenant is fully executed by both parties, the Respondents shall file with the Cuyahoga County Recorder’s Office the Parties’ executed Environmental Covenant for its recording in the same manner as a deed for the property, pursuant to ORC 5301.82. The terms and conditions of the Environmental Covenant are incorporated into these Orders and shall be binding upon the Respondents. Thereafter, if the Respondents convey any interest in the property included in the Site, each deed, title, or other instrument shall contain a notice stating that the property is subject to these Orders and shall reference any monitoring, treatment, or containment systems present on the property as a result of these Orders.

10. Proof of Recording of Environmental Covenant; Effect of Noncompliance

Within thirty (30) days after filing with the Cuyahoga County Recorder the executed Environmental Covenant, the Respondents shall certify to Ohio EPA that the Environmental Covenant has been recorded, and include with the certification a file and date-stamped copy of the recorded Environmental Covenant. If the Environmental Covenant is violated or breached and not returned to compliance by Respondents, the Respondents shall be in violation of these Orders.

11. Land Use Self-Reporting Requirement
Respondents shall ensure that no portion of the Site will be used in any manner that would adversely affect the integrity of any security, containment, treatment, or monitoring systems at the Site. Respondents shall submit on an annual basis, written documentation verifying that any security, containment, treatment, or monitoring systems are in place and operational. The reporting performed under the recorded Environmental Covenant may replace any duplicative reporting performed pursuant to this Section.

12. Sampling and Interim Action

a. If the former machine shop and plating shop areas, or portions thereof, are to be occupied for use, Respondents shall evaluate potential remedies to address vapor intrusion sources below the machine shop and plating shop areas and the adjacent portions of the building.

b. Respondents shall submit any Sampling Plans, Interim Action Work Plans, and any other deliverables to Ohio EPA for approval. Ohio EPA shall provide to Respondents any relevant guidance documents that affect the Work to be performed in implementing the Interim Action. Any Sampling Plans, Interim Action Work Plans, and any other deliverables shall be developed in conformance with the relevant guidance documents. Any plan shall include a proposed schedule that includes a completion date for each task.

c. The results of Ohio EPA’s review shall be provided to Respondents in writing and shall identify any conditions, modifications and/or deficiencies for approval.

d. Upon Ohio EPA’s approval of the Interim Action Work Plan, Respondents shall implement the Interim Action Work Plan as approved.

VII. ACCESS

13. Ohio EPA and its contractors shall have access at all reasonable times to the Site and any other property to which access is required for the implementation of these Orders, to the extent access to the property is controlled by Respondents. Access under these Orders shall be for the purposes of conducting any activity related to these Orders including but not limited to the following:

a. Monitoring the Work;

b. Conducting sampling;

c. Inspecting and copying records, operating logs, contracts, and other documents related to the implementation of these Orders;
d. Conducting investigations and tests related to the implementation of these Orders;

e. Monitoring compliance with activity and use restrictions, and with any mitigation systems installed at the Site; and

f. Verifying any data and/or other information submitted to Ohio EPA.

14. To the extent that the Site or any other property to which access is required for the implementation of these Orders is owned or controlled by persons other than Respondents, Respondents shall use its best efforts to secure from such persons access for Respondents and Ohio EPA and its contractors, as necessary, to effectuate these Orders. Copies of each access agreement obtained by Respondents shall be provided to Ohio EPA upon execution of the access agreement. If any access required to implement these Orders is not obtained prior to Respondents' submission of the Interim Action Work Plan, Respondents shall promptly notify Ohio EPA in writing of the steps Respondents have taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondents in obtaining access.

15. Notwithstanding any provision of these Orders, the State of Ohio retains all of its access rights and authorities, including enforcement authorities related thereto, under any applicable statute or regulation including but not limited to ORC §§ 3734.20 and 6111.05.

VIII. REIMBURSEMENT OF COSTS

16. For Response Costs incurred after the effective date of these Orders that are associated with periodic site inspections and remedy reviews, or with steps necessary to enforce noncompliance with these Orders, Ohio EPA will submit to Respondents, an itemized invoice of its Response Costs for the previous year. Ohio EPA agrees to forgo collection of costs associated with remedy implementation after the effective date of these Orders, along with all costs incurred prior to the effective date of these Orders.

Within thirty (30) days of receipt of such itemized invoice, Respondents shall remit payment for all of Ohio EPA's Response Costs for the previous year. In the event that Respondents do not remit payment of Response Costs within sixty (60) days after receipt of such invoice, Respondents shall remit payment for unpaid balance and the interest accrued on the unpaid balance. Interest shall accrue beginning thirty (30) days from the date of the invoice until the date payment is remitted, and shall be calculated at the rate specified by ORC § 5703.47(B) or any subsequent rate adjustments.

17. Respondents shall remit payments to Ohio EPA pursuant to this Section as follows:

a. Payment shall be made by bank check payable to "Treasurer, State of Ohio /
Hazardous Waste Special Cleanup Account" and shall be forwarded to Office of Fiscal Administration, Attn: Fiscal Officer, Ohio EPA, Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-1049;

b. A copy of the transmittal letter and check shall be sent to the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, and to the Site Coordinator; and

c. Each payment shall identify the name and address of the party making payment, the Site name; and Ohio EPA’s revenue number identified on the associated invoice.

IX. MODIFICATIONS

18. These Orders may be modified by agreement of the Parties. Modifications shall be in writing, signed by the authorized representatives of the Respondents and by the Director, and shall be effective on the date entered in the Journal of the Director of Ohio EPA.

X. INDEMNITY

19. Respondents agree to indemnify, save, and hold harmless Ohio EPA from any and all claims or causes of action arising from, or related to, the implementation of these Orders or to events or conditions at the Site, including any acts or omissions of Respondents, their officers, employees, receivers, trustees, agents, or assigns. Said indemnification shall not apply to acts or omissions of the State of Ohio, its employees, agents or assigns at, on, upon, or related to the Site if said acts are negligent, performed outside the scope of employment or official responsibilities, or performed with malicious purpose, in bad faith, or in a wanton or reckless manner. Ohio EPA shall not be considered a party to and shall not be held liable under any contract entered into by Respondents in carrying out the activities pursuant to these Orders. Ohio EPA agrees to provide notice to Respondents within thirty (30) days after receipt of any claim that may be the subject of indemnity as provided in this Section, and to cooperate with Respondents in the defense of any such claim or action against Ohio EPA.

XI. OTHER CLAIMS

20. Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation not a Party to these Orders, for any liability arising from, or related to, events or conditions at the Site.

With respect to matters addressed in these Orders, the Parties hereto agree that
Respondents are entitled to contribution protection as to any persons who are not parties to this Agreement as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) so long as Respondents comply with these Orders.

XII. RESERVATION OF RIGHTS

21. Ohio EPA reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of these Orders, including penalties against Respondents for noncompliance with these Orders. Except as provided herein, Respondents reserve any rights they may have to raise any legal or equitable defense in any action brought by Ohio EPA to enforce the terms and conditions of these Orders.

22. Ohio EPA reserves the right to terminate these Orders and/or perform all or any portion of the Work or any other measures in the event that the requirements of these Orders are not wholly complied with within the time frames required by these Orders.

23. Ohio EPA reserves the right to take any action, including but not limited to any enforcement action, action to recover costs, or action to recover damages to natural resources, pursuant to any available legal authority as a result of past, present, or future violations of state or federal laws or regulations or the common law, and/or as a result of events or conditions arising from, or related to, the Site. Upon termination pursuant to the Termination Section of these Orders, Respondents shall have resolved their liability to Ohio EPA only for the Work performed pursuant to these Orders.

XIII. TERMINATION

24. Respondents’ obligations under these Orders shall terminate upon approval in writing of Respondents’ written certification to Ohio EPA that all Work required to be performed under these Orders including payment of Response Costs has been completed. The Respondents’ certification shall contain the following attestation: “I certify that the information contained in or accompanying this certification is true, accurate, and complete.” This certification shall be submitted by Respondents to Ohio EPA and shall be signed by a responsible official of Respondents. The termination of Respondents’ obligations under these Orders shall not terminate the Respondents’ obligations under the Reservation of Rights, Access to Information, Indemnity, Other Claims and Land Use and Conveyance of Title Sections of these Orders.

XIV. WAIVER AND AGREEMENT

25. In order to resolve disputed claims, without admission of fact, violation, or liability,
Respondents consent to the issuance of these Orders, and agrees to comply with these Orders.

26. Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders and Respondents hereby waive any and all rights that it may have to seek administrative or judicial review of these Orders either in law or equity.

27. Notwithstanding the limitations herein on Respondents’ right to appeal or seek administrative or judicial review, Ohio EPA and Respondents agree if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such event, Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XV. EFFECTIVE DATE

28. The effective date of these Orders shall be the date these Orders are entered in the Journal of the Director of Ohio EPA.

XVI. SIGNATORY AUTHORITY

29. Each undersigned representative of a Party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such Party to these Orders.

IT IS SO ORDERED AND AGREED:

OHIO ENVIRONMENTAL PROTECTION AGENCY

Craig W. Butler, Director
Ohio Environmental Protection Agency

Date 9/25/18
Chi Minh Eric Duong

BY: 

Signature 

Date: Aug 31 - 2018

Printed Name & Title

ERIC DUONG

Hau Ying Duong

BY:

Signature 

Date
Chi Minh Eric Duong

BY:

Signature ___________________________ Date ___________________________

Printed Name & Title

Hau Ying Duong

BY:  ___________________________ Date: 9/18/18

Signature ___________________________
APPENDIX A

ENVIRONMENTAL COVENANT
ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by Chi Minh Eric Duong and Hau Ying Duong ("Owner") and the Ohio Environmental Protection Agency ("Ohio EPA") pursuant to Ohio Revised Code ("ORC") §§ 5301.80 to 5301.92 for the purpose of subjecting the Property described herein ("the Property") to the activity and use limitations set forth herein.

This Environmental Covenant requires current and future Property owners to meet certain requirements, including, but not limited to:

- Comply with the activity and use limitations given by paragraph 5 that: (1) Limit the use of the property to Commercial and/or Industrial Use; (2) Prohibit the use of groundwater for any purpose, except for ground water monitoring and/or remediation; and (3) Place limitations of any future building occupancy.
- Provide an annual compliance report to Ohio EPA by July 1st of each year, as required by paragraph 9, describing that the Property continues to be used in compliance with the activity and use limitations.
- Give notice to new property owners (also known as “transferees”) upon conveyance, as required by paragraph 10, of the activity and use limitations and the recorded location of this Environmental Covenant.
- Notify Ohio EPA within ten (10) days of each conveyance, as required by paragraph 10, of the property that was conveyed and new owner’s contact information.

WHEREAS, the Property is owned by Chi Minh Eric Duong and Hau Ying Duong, who resides or is located at 7673 Hidden Valley Lane, Parma, Ohio 44129.

WHEREAS, the remedy for the Property includes the activity and use limitations set forth in this Environmental Covenant.

WHEREAS, in order to protect human health and the environment from past releases of hazardous substances at the Property, it is necessary to impose the activity and use limitations set forth in this Environmental Covenant.

Now therefore, Chi Minh Eric Duong and Hau Ying Duong and Ohio EPA agree to the following:

1. **Environmental Covenant.** This instrument is an environmental covenant developed and executed pursuant to ORC §§ 5301.80 to 5301.92.
2. **Property.** This Environmental Covenant concerns an approximately 3.24-acre tract of real property located at 3820 Superior Avenue, Cleveland in Cuyahoga County, Ohio, and more particularly described in Attachment A attached hereto and incorporated by reference herein ("Property").

3. **Owner.** This Property is owned by Chi Minh Eric Duong and Hau Ying Duong ("Owner").

4. **Holder.** Pursuant to ORC § 5301.81, the holder of this Environmental Covenant ("Holder") is the Owner listed above.

5. **Activity and Use Limitations.** Owner hereby imposes and agrees to comply with the following activity and use limitations:

   **Limitation for Commercial or Industrial Land Uses.** The Property is limited to commercial or industrial land use, or any combination of those uses. Residential land use of this Property is prohibited.

   "**Commercial Land Use**" is defined as "land use with potential exposure of adult workers during a business day and potential exposure of adults and children who are customers, patrons, or visitors to commercial facilities during the business day. Commercial land use has potential exposure of adults to dermal contact with soil, inhalation of vapors and particles from soil, ingestion of soil and inhalation of volatile compounds due to vapor intrusion to indoor air. Generic direct contact standards for commercial land use may not be appropriate for properties where a high frequency of potential exposure to children may occur, such as at schools and day care facilities." Accordingly, the Property shall not be used as a day care facility or for any other residential land use. Commercial land use includes, without limitation, warehouses, retail establishments, office buildings, hospitals and clinics, religious institutions, hotels, motels and public areas incidental to such use.

   "**Industrial Land Use**" is defined as "land use with potential exposure of adult workers during a business day and potential exposures of adults and children who are visitors to industrial facilities during the business day. Industrial land use has potential exposure of adults to dermal contact with soil, inhalation of vapors and particles from soil and ingestion of soil and inhalation of volatile compounds due to vapor intrusion to indoor air." Industrial land use includes, without limitation, lumberyards, power plants; manufacturing facilities, assembly plants, non-public airport areas, railroad switching yards, marine port facilities, and public or employee areas incidental to such land use.

   **Prohibition on Ground Water Extraction and Use.** Ground water located at, or underlying the Property, shall not be extracted or used for any purpose, potable
or otherwise, except for investigation, monitoring or remediation of the ground
water, or in conjunction with construction or excavation activities or maintenance
of subsurface utilities.

Limitation on Building Occupancy – Remedy or Demonstration Obligation.
Prior to human occupancy of any new or existing building within the former
machine shop and former plating shop areas as defined in Exhibit 1 on the
Property, either: (i) a remedy that eliminates indoor air vapor intrusion exposure
to hazardous substances in soil or groundwater in excess of applicable standards
shall be installed; or (ii) a demonstration shall be made to Ohio EPA that the
building occupancy area complies with applicable standards for the vapor
intrusion to indoor air exposure pathway without further implementation of
remedial activity.

6. Running with the Land. This Environmental Covenant shall be binding upon the
Owner, during the time that the Owner owns the Property or any portion thereof, and upon all
assigns and successors in interest, including any Transferee, and shall run with the land, pursuant
to ORC § 5301.85, subject to amendment or termination as set forth herein. The term
"Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest
in the Property or any portion thereof, including, but not limited to, owners of an interest in fee
simple, mortgagees, easement holders, and/or lessees.

7. Compliance Enforcement. Compliance with this Environmental Covenant may be
enforced pursuant to ORC § 5301.91 and other applicable law. Failure to timely enforce
compliance with this Environmental Covenant or the activity and use limitations contained herein
by any party shall not bar subsequent enforcement by such party and shall not be deemed a
waiver of the party’s right to take action to enforce against any non-compliance. Nothing in this
Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority
under applicable law.

8. Rights of Access. Owner hereby grants to Ohio EPA’s authorized representatives
the right of access to the Property for implementation or enforcement of this Environmental
Covenant and shall require such access as a condition of any transfer of the Property or any
portion thereof.

9. Compliance Reporting. Owner or Transferee, if applicable, shall annually submit
to Ohio EPA written documentation verifying that the activity and use limitations set forth herein
remain in place and are being complied with. Documentation shall be due to Ohio EPA on July
1st of each year beginning the year after the effective date of this Environmental Covenant, unless
otherwise directed by Ohio EPA.

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the
Property or any portion thereof shall contain a notice of the activity and use limitations set forth in
this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, RECORDED IN THE DEED OR OFFICIAL RECORDS OF CUYAHOGA COUNTY RECORDER’S OFFICE ON __________, 201__, IN [DOCUMENT ____, or BOOK ____, PAGE ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

Limitation for Commercial or Industrial Land Uses.

Prohibition on Ground Water Extraction and Use.

Limitation on Building Occupancy – Remedy or Demonstration Obligation.

Owner or Transferee, if applicable, shall notify Ohio EPA within ten (10) days after each conveyance of an interest in the Property or any portion thereof. The notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the property being transferred.

11. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

A. that the Owner is the sole owner of the Property;

B. that the Owner holds fee simple title to the Property and that the Property is not subject to any interests or encumbrances that conflict with the activity and use limitations set forth in this Environmental Covenant;

C. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;

D. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected;

E. that the Owner has identified all other persons that own an interest in or hold an encumbrance on the Property, and, if applicable, notified such persons of the Owner’s intention to enter into this Environmental Covenant.

12. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner, or a Transferee, if applicable; and the
Director of the Ohio EPA, pursuant to ORC §§ 5301.82 and 5301.90 and other applicable law. The term, “Amendment,” as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations so long as there is at least one limitation remaining. The term, “Termination,” as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA and by the Owner or Transferee, if applicable, of the Property or any portion thereof. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner or Transferee, if applicable, shall file such instrument for recording with the and shall provide a file- and date-stamped copy of the recorded instrument to Ohio EPA.

13. **Severability.** If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

14. **Governing Law.** This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

15. **Recordation.** Within thirty (30) days after the date of the final required signature, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Cuyahoga County Recorder’s Office.

16. **Effective Date.** The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Cuyahoga County Recorder’s Office.

17. **Distribution of Environmental Covenant.** Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to Ohio EPA.

18. **Notice.** Unless otherwise notified in writing by any party hereto or Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

As to Ohio EPA:

Ohio EPA – Central Office
Division of Environmental Response and Revitalization
50 West Town Street
Columbus, Ohio 43216
Attn.: DERR Records Management Officer
Or, send electronically to: records@epa.ohio.gov

And

Ohio EPA - Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn.: DERR Site Coordinator for Kichler Lighting/Asian Town Center

As to Owner:

Chi Minh Eric Duong and Hau Ying Duong
7673 Hidden Valley Lane
Parma, Ohio 44129

And

Asian Town Center
3820 Superior Avenue
Cleveland, Ohio 44114

[Remainder of page left intentionally blank]
The undersigned represents and certifies that the undersigned is authorized to execute this Environmental Covenant.

IT IS SO AGREED:

Chi Minh Eric Duong

Signature of Owner

ERIC DUONG PRESIDENT

Printed Name and Title

Hau Ying Duong

Signature of Owner

HAU YING DUONG

Printed Name and Title

State of Ohio

ss:

County of Cuyahoga

Before me, a notary public, in and for said county and state, personally appeared

ERIC DUONG, HAU DUONG, a duly authorized representative of the Owner, who acknowledged to me the execution of the foregoing instrument on behalf of the Owner.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 10 day of Sept., 2018.

Notary Public

OHIO ENVIRONMENTAL PROTECTION AGENCY

NASAVA W PHAM
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires 06-18-2022
Recorded in Cuyahoga County
Environmental Covenant
Page 8

OHIO ENVIRONMENTAL PROTECTION AGENCY

Craig W. Butler, Director

State of Ohio )

ss:

County of Franklin )

Before me, a notary public, in and for Franklin County, Ohio, personally appeared Craig W. Butler, the Director of Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 25th day of SEPTEMBER, 2018.

[Signature]
Notary Public

This instrument was prepared by:

William Damschroder
Ohio EPA-Legal Office
50 West Town Street
Columbus, OH 43215

[Signature]
May 10, 2019
Parcel no. 1

Situated in the City of Cleveland, County of Cuyahoga, and State of Ohio, and known as being Sub Lots Nos. 67, 49, 70, 71, 145, 146, 147, 148, 149 and 150 in the J. K. Hitchcock Allotment of a part of Original Ten Acre Lots Nos. 120 and 121, as shown by the recorded plat in Volume 1 of Maps, Page 27 of Cuyahoga County Records, and Sub Lots Nos. 247, 251, 252 and part of Sub Lot No. 253 in James M. Hoyt and others' Allotment of part of Original Ten Acre Lots Nos. 117, 118 and 119, as shown by the recorded plat in Volume 1 of Maps, Page 33 of Cuyahoga County Records, and part of Cooper Street, now vacated, and part of East 39th Street, now vacated, and together forming a parcel of land, bounded and described as follows:

Beginning on the Southerly line of Superior Avenue, N.E. at the Northeasterly corner of said Sub Lot No. 67; thence Northeasterly along the Southerly line of Superior Avenue, N.E., 99 feet 4 1/2 inches to the Northeasterly corner of said Sub Lot No. 247; thence Southerly along the Westerly line of said Sub Lot No. 247, 164 feet 7 inches to the Southwesterly corner thereof; thence Easterly along the Southwesterly line of said Sub Lot No. 247, 74 feet 9 inches to the Southwesterly corner thereof, said Southwesterly corner being also in the Easterly line of the James M. Hoyt and others' Allotment as recorded in Volume 1 of Maps, Page 27 of Cuyahoga County Records; thence Southerly along the Easterly line of said James M. Hoyt and others' Allotment as aforesaid, said Easterly line being also the Westerly line of the J. K. Hitchcock Allotment as recorded in Volume 1 of Maps, Page 27 of Cuyahoga County Records, about 118 feet 7 inches to the Northeasterly corner of said Sub Lot No. 251; thence Westerly along the Northerly line of said Sub Lot No. 251, 132 feet to the Northerly line of C. 38th Street, thence Southerly and along the Easterly line of East 38th St., 110 feet to a point 10 feet Northerly from the Southwesterly corner of said Sub Lot No. 253; thence Easterly along a line parallel with the Southerly line of said Sub Lot No. 253, 132 feet to the Easterly line of said James M. Hoyt and others' Allotment; thence Southerly along the Easterly line of the James M. Hoyt and others' Allotment, about 246 feet to the Northerly line of Lemar Avenue, N.E.; thence Easterly along the Northerly line of Lemar Avenue, N.E., about 198 feet 5 inches to the center line of East 39th Street, now vacated, thence Northerly along the center line of East 39th Street, now vacated, to the Southwesterly line of the right of way of the Cleveland and Pittsburgh Railroad Company; thence Northwesterly along the Southwesterly line of said right of way to the place of beginning, as appears by said plat, be the same more or less, but subject to all legal highways.

Parcel No. 2

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being the Southerly 10 feet of Sub Lot No. 253; and the Northerly 10 feet of Sub Lot No. 254 in James M. Hoyt, and others' Subdivision of part of Original Ten Acre Lots Nos. 117, 118, 119, as shown by the recorded plat in Volume 1 of Maps, Page 33 of Cuyahoga County Records, and together forming a parcel of land having a frontage of 20 feet on the Easterly side of East 38th Street, and extending back of equal width 132 feet, as appears by said plat, be the same more or less, but subject to all legal highways.
APPENDIX B

PROPOSED LIMITATION ON BUILDING OCCUPANCY AREA
APPENDIX C

NOTICE AND DEED RESTRICTION RECORDED 08/02/1999
ATTACHMENT 1

OHIO E.P.A.

NOTICE AND DEED RESTRICTION
Revised July 29, 1999

ENTERED DIRECTORS JOURNAL

The record owners, Harold S. and Clare Minoff, ("Owners") hereby provides public notice and imposes restrictions on real estate depicted on the attached Boundary Survey ("Property") prepared by Neff & Associates and including Permanent Parcel Numbers (PPN) 102-30-001, 002, 035, 036, 037, 038, 039, 040, and 041.

1) Notice is hereby provided that the Ohio Environmental Protection Agency (OEPA) has been provided with a No Further Action (NFA) letter and supporting documentation by a Certified Professional for the Property pursuant to the Voluntary Action Program and Ohio Revised Code (ORC) chapter 3746 and Ohio Administrative Code (OAC) chapter 3745-300. In order for the NFA determination to remain valid, the Owner hereby imposes the following restrictions on the Property:

   a) The property use will remain commercial/industrial such that the potential exposure of children and adults to dermal contact with soil and groundwater, inhalation of vapors and particulates, and ingestion of soil and groundwater are consistent with the exposure scenario described in the Voluntary Action Program Baseline Risk Assessment included as part of the NFA submittal and, if applicable, as modified pursuant to OEPA comments. This deed restriction prohibits the use of groundwater for potable purposes and for processing or cleaning of any sort. No wells are to be installed on the site for purposes other than groundwater monitoring or remediation.

   b) The building on PPN 102-30-041 is vacant and will remain so until razed. Furthermore, any future free standing structures intended for human occupancy constructed west of MW-12, between the south line of PPN 102-30-001 and the north line of PPN 102-30-39, will be constructed in a manner, using engineering controls such as a ventilated crawl space or subfloor ventilation and a vapor barrier, that will eliminate the risk associated with indoor exposure to volatile organic vapors that may be emitted from the underlying groundwater and soil. See the attached Boundary Survey that shows the area to which this restriction applies. Pursuant to paragraph 2) below, information will need to be submitted to OEPA showing that the use of engineering controls will maintain the validity of the assumed exposure scenario described in the Voluntary Action Program Baseline Risk Assessment included as part of the NFA submittal and, if applicable, as modified pursuant to OEPA comments. Note that such precautions will not be necessary if the new structure in this area is an addition to the existing main building and its ventilation system is connected to that of the main building.

2) The above restrictions shall run with the land and be binding upon the Owner, its successors, assigns, transferees, or any other owner of the real estate. The above restrictions shall continue in perpetuity, subject to termination or modification as described in paragraph 2) a):
The Owner, its successors, assigns, transferees, or any other owner of the real estate described above may provide sufficient information to the OEPA, in accordance with ORC chapter 3746 and OAC 3745-300, including any applicable fees, to modify or terminate any part or all of the restriction imposed herein based on cause. The petition for modification shall state the specific provision(s) sought to be modified or terminated and shall further include evidence demonstrating that such modification or termination is in accordance with the requirements of the Voluntary Action Program ORC chapter 3746 and OAC chapter 3745-300, and is submitted by an OEPA Certified Professional. The modification or termination of this restriction is not effective without the prior written approval of the director of the OEPA, and until such written approval is recorded in the official records of the Cuyahoga County Recorder's office. The OEPA reserves the right to require a new NFA submittal in the event the modification proposes a substantially different remedy or applicable standard than the original NFA associated with this deed restriction.

3) The Ohio environmental protection agency reserves all legal and equitable rights to enforce compliance with these restrictions.

SIGNATURES

Owner or Authorized Representative(s)

[Signature]
Title: Owner
Date: 8/1/99

[Signature]
Title: Owner
Date: 8/1/99

Witnesses

1. [Signature]

2. [Signature]

STATE OF OHIO

CUYAHOGA COUNTY

Before me, a Notary Public in and for said County and State, personally appeared

[HAROLD S. STEIN] and [CRISTIE MUNCEF], and acknowledges the execution of the forgoing Notice and Deed Restriction for and on behalf of [OWNERS].

Witness my hand and seal this 1st day of August, 1999.

[Notary Public]

HAROLD S. STEIN, Attorney At Law
Notary Public - State of Ohio
My appointment has no expiration date.
Section 147.03 R.C.